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ABSTRACT

Massachusetts currently maintains several charter schools in its K-12 educational system. This paper applies the charter school idea to public institutions of higher education. Charter colleges are publicly owned institutions managed independent of most controls imposed by state bureaucracies and higher education systems. Charter schools are more able to manage their own administrative affairs, although they are still subject to local, state and federal laws. It is argued that controlled deregulation of higher education via the charter school, fosters efficiency and offers improved educational results. Massachusetts may benefit from introduction of the charter college concept within its public higher education system. Charter colleges make sense because they capitalize upon academia's desire for more autonomy, yet provide increased levels of accountability for each college in terms of results. Michigan and New Jersey serve as historical and recent case studies, respectively. The paper also draws on research which compares independent institutions with more highly regulated ones. Interviews with political and educational leaders support this argument as well. Three appendices are included. (HB)

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CHARTER COLLEGES:
BALANCING FREEDOM AND ACCOUNTABILITY

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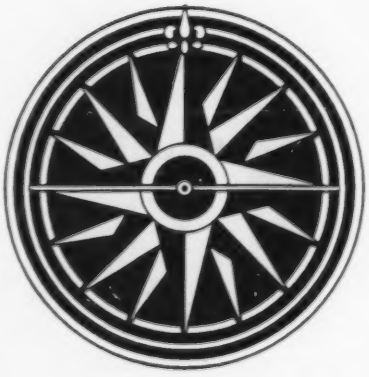

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White Paper No. 10 • January 2000

CHARTER COLLEGES: BALANCING FREEDOM AND ACCOUNTABILITY

Robert O. Berdahl and Terrence J. MacTaggart

Pioneer Institute for Public Policy Research
Boston, Massachusetts

Pioneer Institute
for Public Policy Research

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NOTES ON INTERVIEWS

To undertake this assignment for the Pioneer Institute, which gave us complete editorial freedom and total support, we had to rely much more on interviews with key actors than on pursuit of the written record. For this topic is so new that the paper trail is very thin. We therefore requested off-the-record interviews with some 20 persons, spread across the policy spectrum, and were granted the opportunity with 16 of them. We talked with one member, and one former member, of the Governor's staff, three legislators, six college presidents (five from public, one from private), two faculty, two persons from the state coordinating board, and one from an agency that knew thoroughly the Massachusetts K-12 charter school picture. We several times requested to meet with a representative of a faculty union in Massachusetts, but it was not possible when we needed it. We also sought a telephone interview with a community college president, but we were not able to make the connection. In the few cases in which we have identified some actual words from a few persons, we want to stress that these were taken from public press clippings and not from the confidential interview process. The interview results are accordingly more evident in our judgments than from explicit quotes from them.

A number of reviewers selected by the Pioneer Institute agreed to comment on a working draft of this report. Reviewers offered thoughtful insights that we have incorporated in the text where it made sense to do so, although a few proved to be so at odds with the basic idea of public charter colleges that we were unable to address their concerns. We appreciate the time and attention provided by Robert Archibald, James Carlin, Charles Cook, Bruce Cooper, Pat Crosson, John Donahue, Stanley Koplik, Jeffrey Miron, Peter Nessen, and Michael Riccards.

Our findings, then, represent an amalgam of what we heard and read, blended across our previous experience with parallel issues. We welcome critical feedback from other concerned citizens.

R.O.B. and T.J.M.

EXECUTIVE SUMMARY

Massachusetts is in the midst of several experiments with deregulating K-12 education in the hopes of improving educational results. Commonwealth Charter Schools, Horace Mann Schools, and Boston Pilot Schools, to name three prominent examples, are individual public schools granted varying degrees of independence from school district regulations and collective bargaining agreements in return for a charter or agreement to develop unique or model education programs.

This paper applies the charter school idea to public higher education. It makes the case that deregulation coupled with a charter or agreement with the state will enable institutions to operate more efficiently and will produce higher quality educational results. The argument is based on research comparing highly regulated institutions with more independent colleges across the country, as well as interviews with a number of educational, public policy, and political leaders in Massachusetts. The authors draw on the history of Michigan as well as the more recent experience in New Jersey.

Charter colleges are publicly owned institutions managed independent of most controls imposed by state bureaucracies and higher education systems. They are subject to applicable local, state, and federal laws and required to follow standard financial accounting and reporting procedures. They are governed by their own boards of trustees, although their charters are granted and evaluated by the state's coordinating agency. Charter colleges enjoy almost complete discretion in managing their administrative affairs. For example, the authority to contract for services, finance and oversee capital projects, set salaries and titles for non-represented employees, set tuition rates, build and hold reserves for multiple years, establish foundations for the receipt of private gifts, and, in some instances, negotiate employee contracts with bargaining units or manage under a flexible sidebar to master agreements.

The charter that details the institution's relationship with the state confirms the mission of the institution, the level of its educational programs, the funding agreement with the state, the specific management authority delegated to the college, and the educational and other results that are expected to be achieved within a fixed period of time.

St. Mary's College of Maryland offers one successful example of the charter college idea in action. The Massachusetts College of Art and the Massachusetts Maritime Academy are both poised to exploit charter status; each serves a distinct student clientele, and each has the potential to raise even more funds in the private market, given the distinction of charter designation.

The key to the success of charter colleges lies in linking authority and responsibility to the leaders at the campus, on the one hand, and insisting on well-defined results that both the state's representative and the college negotiate and then agree upon in a charter, on the other. The precise definition of charter colleges would need to be adjusted to recognize the political realities of the Commonwealth. With some

modifications, the charter college idea represents an attractive choice for several and perhaps eventually for more of the state's public institutions.

CHARTER COLLEGES: BALANCING FREEDOM AND ACCOUNTABILITY

Robert O. Berdahl and Terrence J. MacTaggart

INTRODUCTION

Massachusetts is in the midst of several experiments with deregulating K-12 education in the hopes of improving educational results. Commonwealth Charter Schools, Horace Mann Schools, and Boston Pilot Schools, to name three prominent examples, are individual public schools that are given some degree of independence from school district regulations and collective bargaining agreements in return for a charter or agreement to develop unique or model education programs. To prove their worth, these experiments are given three years in the case of Boston Pilot Schools and five years in the case of the Commonwealth Charter and Horace Mann Schools.

This paper applies the charter school idea to public higher education. It makes the case that deregulation of individual public colleges or universities, coupled with a charter or agreement with the state, will enable these institutions to operate more efficiently, to produce higher quality educational results, and to achieve other socially desirable goals. Based on our research comparing highly regulated institutions with more independent colleges across the country, as well as interviews with a number of educational, public policy, and political leaders in Massachusetts, we conclude that charter colleges represent a sensible alternative for several, and eventually perhaps many, of the Commonwealth's public colleges.

The case for charter colleges does not rest on the presumed eventual success of charter schools. While the early results are promising, the jury is still out on whether charter schools on a large scale will prove to be a successful alternative to conventionally organized public schools. There are obviously substantial differences in governance, funding sources, structure, and culture between K-12 schools and colleges and universities. We argue that charter colleges make sense because they capitalize on the profound desire within academic culture for more autonomy. In return for greater independence, the state receives more accountability for results. Analysis of the effects of deregulation of colleges and universities suggests that the right balance of autonomy with accountability can be struck.

CHARTER COLLEGES DEFINED

As the idea of charter colleges is not yet a familiar concept in American higher education, it is important to define it and suggest how it relates to policies such as deregulation, decentralization, privatization, and accountability. This description synthesizes features of St. Mary's College of Maryland, the

best known example of a charter college nationally, as well as aspects of the relatively independent public colleges and universities in Michigan and New Jersey. We use the term charter *colleges* for the sake of convenience, although a charter relationship could be developed between the state and a university, community college, or technical institute, as well as a public college.

Charter colleges are publicly owned institutions managed independent of most procedural controls imposed by state bureaucracies and higher education systems. They are subject to applicable local, state, and federal laws and required to follow standard financial accounting and reporting procedures. Their own boards of trustees govern such institutions, although their charters are granted by, and they are evaluated by, the state's coordinating board or governing agency. Charter colleges enjoy almost complete discretion in managing their administrative affairs, often including, for example, the authority to contract for services, to finance and oversee capital projects, to set salaries and titles for non-represented employees, to set tuition rates, to build and hold reserves for multiple years, to establish foundations for the receipt of private gifts, and in some instances to negotiate employee contracts with bargaining units or manage under a flexible sidebar to master agreements. Thus charter colleges are free of much state regulation. (We address in detail the role of collective bargaining in potential charter colleges in Massachusetts later in this report.)

Policy leadership rests with the college governing board and the president and the campus faculty senate; the locus of management authority resides in the president's office. Charter colleges are not strictly speaking privatized, as that would mean converting the institution to a non-public entity owned by its board of trustees. Charter colleges remain fundamentally public institutions with substantial authority delegated to them to manage their affairs. Charter colleges are normally not new institutions created from scratch, as charter schools tend to be, but are existing academic entities that receive greater license to operate in return for achieving specified results.

The charter that details the new relationship with the state is a critical document. It confirms the name and mission of the institution, the level of its educational programs (e.g., associate's, bachelor's, master's, doctorate), the funding agreement with the state, the specific management authority delegated to the college, and the educational and other results that are expected to be achieved within a fixed period of time. The latter might include expectations for student performance both upon admission and graduation, private fund raising goals, recognition for excellence by the type of institution receiving the charter, and other expectations for better performance.

The charter college idea was first launched in Massachusetts in 1997 by Stanley Koplik, Chancellor of the Massachusetts Board of Higher Education. Dr. Koplik chose the title "Vanguard Colleges" to avoid confusion or extraneous debates connected with the K-12 charter school issue. (Appendix A contains the details of the 1997 Vanguard College proposal.) However, the notion failed to gather strong sustained support and was shelved until Governor Cellucci voiced support for "charter colleges" in his

spring 1999 budget message. Both the Vanguard and the Governor's proposal envisaged the abolition of tenure and collective bargaining. The model for a chartered college advanced in this paper departs from this prior model.

This paper is organized into three parts. The first section summarizes the nation's experience dealing with contrasting state policies. These include attempts to bring about improvements through more intense centralization and process regulation, on the one hand, and strategies relying more on the market and institutional self-interest than rules imposed from above, on the other. It draws on the history of Michigan, where public institutions have struggled to maintain and hold constitutional independence from state control, as well as the much more recent experience in New Jersey, where in 1994 Governor Whitman eliminated a powerful state coordinating board and transferred much of its authority to the trustees of individual public colleges. The second section focuses on the seven-year experience of St. Mary's College of Maryland, a public liberal arts college governed by its own trustees and exempt from most state administrative regulation, and also covers relevant policies currently being considered in Virginia. The third section proposes how the charter college idea, adjusted to fit the political realities and policy expectations of Massachusetts, could be developed and implemented in the Commonwealth. We hope that even skeptics of the charter *school* movement will suspend judgment and consider our ideas regarding the structural reforms connected with the notion of charter *colleges*.

An Era of Regulation

The charter college idea seeks better results by substituting a charter or agreement for process regulation. Since any reform is more apt to succeed if it takes into account the results of similar efforts, it makes sense to look at the modern history of governance change in American higher education. This section outlines the causes and consequences of increased regulation of colleges and universities, then summarizes the same for attempts at reform through deregulation.

The post-World War II story of American higher education is one of massive growth in plant, program, and participation and unparalleled increases in access that cut across the boundaries of gender, age, income, location, and ethnic background. American higher education is widely recognized for trying to achieve both quality and equality, to a degree not realized elsewhere. But it is also a story of unnecessary regulation, excessive oversight, and barriers to higher quality. If this presents something of a paradox, surely the answer lies in the truism that even good systems can be made better. While the idea of chartering public colleges probably represents only a small part of the response to this paradox, in our judgment it is a small step worth taking.

Shortly after the war, most public colleges and universities existed as relatively autonomous institutions governed by their own or system boards. By the early 1970s, all but three states had established governing or coordinating boards to plan for and oversee America's burgeoning public higher education

enterprise. The state push toward coordination was strengthened by the passage of the federal Higher Education Facilities Act of 1963, which required states desiring to participate in federal funding for new buildings to create, or designate an existing, state facilities commission on which both public and private higher education institutions were to serve. This push was later reinforced by the Higher Education Act of 1965 and the Higher Education Amendments of 1972, which encouraged additional state activities such as expanded state student aid.

Most public colleges and universities today fall under the control of either a system governing board that performs the trustee functions of a collection of institutions sometimes at a statewide level or a statewide coordinating board that might exert authority over new program approval, tuition levels, budget requests, and other matters. Some system boards oversee similar institutions such as community colleges or state universities. Others govern a heterodox group that might include a research university, an urban campus, and smaller regional institutions. The governance model in Massachusetts is especially complex. While the University of Massachusetts dates back to the agricultural college in Amherst in 1863, the community college system developed in 1958 and the state college system in 1963. The Massachusetts Board of Higher Education (MBHE) functions somewhat as a governing board for the state colleges and community colleges, although these institutions also have campus boards with authority to select presidents, subject to the approval of the MBHE. MBHE acts more as a coordinating board for the University of Massachusetts, which enjoys greater independence than the other public institutions. The private institutions chartered after 1943 fall under the board's review authority.

In addition to the control exerted by system governing and statewide coordinating boards, in many states, including Massachusetts, powerful bureaucracies such as the attorney general's office, the departments of employee relations, finance, administration, and facilities or capital asset management not only publish rules but often manage day-to-day affairs. It is not uncommon for a state bureaucracy to manage or supervise closely union contract negotiations, purchasing, legal affairs, and construction. Colleges and universities are also regulated by federal agencies including the Department of Education, the Occupational Safety and Health Administration, the Environmental Protection Agency, the Internal Revenue Service, and a variety of lesser-known agencies.[1]

The forces working to make public colleges and universities so highly regulated include efforts to

- manage the rapid growth in academic programs, student enrollment, and facilities
- consolidate or at least orchestrate budget requests to state legislatures
- resolve conflicts among institutions and regions of the state someplace other than the halls of the statehouse

[1] T. MacTaggart (ed.), *Seeking Excellence Through Independence: Liberating Colleges and Universities from Excessive Regulation* (San Francisco: Jossey-Bass, 1998), p. 3.

- provide a central source of information and response to requests for information and compliance reports to legislative committees and state regulatory agencies
- address demands for improved consumer service in such areas as the transfer of credits, more complete information to facilitate student choices, and the quality of learning results
- achieve some economies of scale and consistency through consolidated services such as capital planning, purchasing, legal services, human resources, computing, facilities management, and so on
- negotiate and administer master contracts with the increasing numbers of faculty and other employee groups represented by unions
- deliver greater accountability in the disbursement of federal and state financial aid monies.[2]

In the late 1980s and early 1990s, the national economic recession coupled with state revenue shortages reenergized attempts to reduce costs and otherwise rationalize governance structures. A number of states, including Massachusetts, Maryland, Minnesota, North Dakota, and Alaska, sought to reduce costs, improve efficiency and quality, and accomplish other policy goals through a more centralized exertion of authority. Restructuring in North Dakota, a small state with 11 modest-sized campuses, generally accomplished its policy objectives. The results of the other attempts at reform through regulation and greater central control delivered mixed results. In general, the goals of increasing efficiency, reducing duplication, and improving quality either failed to occur or if they did, the change appears to be unconnected to reorganization. For example, total costs changed little as a result of these restructurings, as decreases in state investments were replaced with dramatic hikes in student tuition and fees.[3]

Political intrusion, flawed planning, bungled implementation strategies, and in some instances the sheer difficulty of trying to meld complex bureaucracies into streamlined units were the immediate problems. However, the underlying cultural and political structure of colleges and universities also worked to obstruct efforts to improve operations through more centralized control. After studying these attempts, MacTaggart concluded,

> The inherent independence of the faculty, buttressed by traditions of tenure, shared governance, and academic freedom on the one hand and the loyalty and self-interest of external constituencies such as alumni, local political factions, and businesses that profit from the institutions on the other, plus the host of other political, economic, and social interest groups that felt they had something to lose or gain in the change combined to frustrate these attempts at highly centralized management.[4]

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[2] D.B. Johnstone, *Central Administrations of Public Multi-Campus College and University Systems: Core Functions and Cost Pressures, with Reference to the Central Administration of the State University of New York* (Albany: State University of New York, 1992), A. C. McGuinness, Jr., "A Model for Successful Restructuring," chap. 8 in T. MacTaggart et al. (eds.), *Restructuring Higher Education: What Works and What Doesn't in Reorganizing Governing Systems* (San Francisco: Jossey-Bass, 1996).
[3] T. MacTaggart (ed.), *Seeking Excellence Through Independence*, p. 7.
[4] Ibid.

This is not to say that talented system leaders and enlightened public managers have not used their offices to bring about positive results. Among the successes of some highly regulated systems have been effective political advocacy on behalf of public institutions and their students, cost savings associated with controlling program proliferation and duplication of administrative services, and the implementation of worthy policy initiatives such as improving undergraduate education and linking the university's research agenda to economic development initiatives. In addition to these significant management and policy achievements, regulation by system, state, and federal entities deserves some credit for other accomplishments:

- reduction, if not elimination, of fraud, abuse, and corruption
- assurance that employees whatever their status can exercise their rights to bargain collectively over wages, working conditions, and other matters
- substantial increase in opportunity for minorities and women in all aspects of university life
- safer laboratory and other teaching and learning environments.

But the cumulative effect of regulation and the obstacles imposed by potent interest groups has been to reinforce a culture in which it is extraordinarily difficult to bring about change. Many leaders who have been chief executives in both public and independent universities agree that public higher education institutions too often display

- gridlock in decision making as powerful interest groups resist change
- incentive systems favoring minimal rather than exceptional levels of quality
- an environment where administrators can neither manage well nor lead
- emphasis on following routine rather than seeking creative alternatives
- great resistance to productivity improvements.[5]

The key question today is not the historic value of centralization and regulation in an earlier era of steady expansion, but their relevance for a future characterized by greater consumer power, unparalleled competition from profit-making academic institutions, and widespread information technology that lessens the relevance of geographic barriers and makes at least some forms of learning possible virtually at any time and in any place. To many observers, models of coordination and regulation that worked "quite reasonably" in the past and relied "on economies of scale, centralization, standardization, and process oriented accountability"[6] no longer meet contemporary demands for quicker decision making, more responsiveness to consumer demands, improved productivity, and higher standards of educational quality.

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[5] W. Bennis, *Why Leaders Can't Lead: The Unconscious Conspiracy Continues* (San Francisco: Jossey-Bass, 1989); J. Fisher, "The failure of statewide coordination," *Chronicle of Higher Education*, 16 June 1995; J.A. DeBiaggio, G.A. Haaland, and S.B. Sample, "Confessions of a Public University Refugee," *Trusteeship* 4, no. 3 (1996): 6-9; K.A. Shaw, "Helping Public Institutions Act Like Private Ones," chap. 3 in T. MacTaggart (ed.), *Seeking Excellence Through Independence*.

If the regulatory approach in higher education that "runs counter to the development in American national economic policy toward more competition and autonomy"[6] no longer meets the demands of a more competitive knowledge marketplace, does some deregulatory option stand a better chance?

Deregulation and the Possibility of Reform

There are signs that the nearly forty-year march toward more centralized and bureaucratic governance structures is slowing, and in a few instances being reversed. Encouraged by contemporary trends in business and government favoring increased competition, decentralization, and deregulation, many states are exchanging management by process rule for management for results. This change takes two forms: widespread, but fairly modest reductions in the administrative or process regulations imposed by systems and state bureaucracies on the one hand and, on the other, far fewer, but bolder initiatives such as the elimination of a strong coordinating board in New Jersey and the franchising of St. Mary's of Maryland as a quasi-independent public college.

Many higher education officials have sought and often received some relief from unnecessary regulatory oversight, including greater latitude in initiating new academic programs,[8] freedom to set tuition rates within some range, the option to retain and use tuition revenue instead of having it deposited in state coffers, higher thresholds for purchasing and contracting, and some increased local control over capital projects. Sometimes this devolution occurs within higher education systems, occasionally and usually reluctantly state bureaucracies give up some control, and sometimes there are examples of both. These efforts to locate authority and responsibility as close to the action as practicable hold out the promise of enabling colleges to be more responsive to their student consumers and to manage their administrative affairs more efficiently. While these changes do not represent a fundamental change in the equation that balances freedom with accountability, they do appear to be accomplishing their purposes.

There are lessons for Massachusetts in both the modest and more dramatic types of devolution, as well as from the example of Michigan public higher education, which, in contrast to prevailing trends in most other states, has vigorously defended its constitutional independence to operate in a virtual free market environment. It should be noted that in a few states, constitutional autonomy offers substantial freedom, although some argue that this constitutional independence insulates universities too much from justifiable state oversight of educational results.

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[6] P. Callan, "The Gauntlet for Multicampus Systems," *Trusteeship* 2, no. 3 (1994): 19.
[7] C. Kerr and M.L. Gade, *The Guardians: What They Do and How Well They Do It* (Washington, D.C.: Association of Governing Boards of Universities and Colleges, 1989), p. 117.
[8] R. Epper, *Deregulation of State-level Academic Program Policies* (Denver: State Higher Education Executive Officers, 1999).

THE PROS AND CONS OF DEREGULATION

What are the presumed advantages for these changes, and what are the dire consequences predicted to follow their implementation? After outlining the presumed benefits of deregulation and the arguments in favor of strong oversight, this section discusses the actual consequences of deregulating higher education to date.

Greater independence from regulation, proponents argue, will do the following:

1) Underpin academic freedom. The historic responsibility of the academy to pursue and disseminate truth independent of society's current political or ideological orthodoxy not only demands protection of intellectual freedom, but insulation from political, ideological, and bureaucratic intrusion as well.[9]

2) Attract and develop more effective leaders. A recent Commission on the Academic Presidency, for example, laments that "Instead of a leader, the president has gradually become juggler-in-chief, expected to meet an endless stream of individual needs and special demands."[10] An important remedy, according to the commissioners, is to grant leaders "greater independence from regulation in exchange for demonstrated results."[11]

3) Increase responsiveness to consumer needs. Noting the acceleration of market-oriented competition from the independent sector as well as fast growing proprietary academic institutions, public college executives argue that they too will deliver more relevant services in a timely way if they are less fettered in developing new academic programs, in setting the price for their services, in retaining tuition revenue to invest in new services, and in crossing service area boundaries.

4) Produce more distinctive institutions of higher quality. Decrying the "one-size-fits-all" pattern of many system regulations, advocates argue that institutions specializing in the fine arts, technology, and those focused on preparation for careers in specific industries will become stronger if allowed to set their own admissions, curriculum, and financial policies. Leaders of more conventional schools who wish to develop greater distinctiveness make a similar case.

5) Improve overall management efficiency. One president claims that on his campus the state is erecting an $8-million building for what may ultimately cost $11 million. Delays, weak construction oversight, and forced adherence to irrelevant or extreme building codes are some problems cited across the country when construction projects are managed by bureaucrats with little stake in timely, efficient completion.

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[9] F. Newman, *Choosing Quality: Reducing Conflict Between the State and the University* (Denver, Colorado: The Education Commission of the States, 1987).
[10] Commission on the Academic Presidency, *Renewing the Academic Presidency: Stronger Leadership for Tougher Times* (Washington, D.C.: Association of Governing Boards of Colleges and Universities, 1996), p. 11.
[11] Ibid., p. 32.

6) Encourage competition and thus reduce cost to the public and consumers. Looking to examples from the industries as diverse as airlines, computers, and agriculture, educational free marketers contend that as higher degrees become a more widely available commodity the price will fall.

Those concerned over deregulation of colleges and universities cite the following as possible consequences of less oversight:

1) Reduced access especially for minorities and low-income students.[12] Others fear that the freedom to set tuition will make the more distinctive institutions unaffordable for low-income families.

2) Costly duplication of programs across the state. Unchecked by program review and approval processes imposed by system and coordinating boards, the argument goes, high demand programs will proliferate while additional master's and doctoral programs will be added by colleges ambitious to expand their missions.

3) Damage to uncompetitive public and private colleges. Unfettered competition will drive poorly led institutions, those in sparsely populated areas of the state, and private institutions with modest reputations but high tuition out of business, depriving groups of students and regions of the state.

4) Widespread fraud and abuse. An important rationale for standard policies in finance, contracting, and personnel audited by a separate authority is to prevent misuse of public money, insider dealing, and favoritism. Granting free rein to local trustees and institutions in these procedural areas may invite abuse.

Consequences of Deregulation

Given the recent history of deregulating higher education, care must be taken in coming to broad conclusions about results. New Jersey's experience dates only to 1994, St. Mary's to 1992. Both states have experienced strong economies during this period. Their experiences with autonomy have not been fully tested by time, reduced resources, or serious political opposition. Public higher education in Michigan, with its constitutional autonomy for four-year colleges and very weak state coordination out of the State Board of Education, has enjoyed a virtual free market since the mid-nineteenth century, but it has also benefited from being in a wealthy state offering substantial support for public higher education.[13] Because of its long history of autonomy, Michigan provides less guidance on the process of deregulation than on the capacities necessary to sustain a diverse, high-quality collection of institutions in a competitive environment.

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[12] The NAACP, for example, opposed Governor Whitman's changes in New Jersey on the grounds that left to go their own way the state colleges would lose interest in their historic access missions. D.G. Greer, "Defining the Scope and Limits of Autonomy: New Jersey" chap. 5 in T. MacTaggart (ed.), *Seeking Excellence Through Independence*.

[13] W. Peterson and Michael K. McLendon, "Achieving Independence Through Conflict and Compromise: Michigan," chap. 8 in T. MacTaggart (ed.), *Seeking Excellence Through Independence*, p. 170; see also R.C. Richardson, K.R. Bracco, P. Callan, and J.E. Finney, *Designing State Higher Education Systems For a New Century* (Phoenix: The Oryx Press, 1999).

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Still, our review of deregulation across the country—both the widespread, but modest efforts in many states and more dramatic changes as well as our own experiences in both highly and less regulated systems—suggests that the new freedom not only generally supports academic quality but also sustains a diverse student body. Deregulation as currently practiced does not, however, represent a cheaper alternative.

While education quality is sometimes measured in terms of resources, reputation, and rankings, as well as improvements in what students know and can do, most observers would agree that the deregulated institutions in Michigan, Maryland, and New Jersey offer substantial quality to their students. Reputational studies consistently put the University of Michigan and Michigan State University high on their lists. Regional universities in that state hold general accreditation and appropriate specialized accreditations; the faculty are well qualified, physical facilities are at least adequate, and standards generally at least meet or exceed national norms. By all accounts, the free market has delivered an impressive array of strong institutions from which the people of Michigan, and the country, may choose.

St. Mary's appears to be one of the best of its kind, as the next section makes clear. And there is no evidence of reduced standards in New Jersey since devolution in 1994.

The concern that deregulation would lead to a concentration on affluent, white students to the detriment of minorities and low-income persons has simply not occurred. In summarizing the work of Peterson and McLendon, Berdahl, and Greer respectively on diversity in Michigan, at St. Mary's College of Maryland, and in New Jersey, MacTaggart concludes,

> While about one of five Michigan residents comes from a minority group, nearly a third of the enrollments at the research universities are minority and about 15 percent at the other public universities and community colleges. In keeping with its compact with the State of Maryland, St. Mary's sustains a modestly increasing minority population, which reached 16 percent of enrollment in 1994. [In 1999, 20 percent of the entering freshman class was minority.] The history of minority enrollment in New Jersey reveals that the consistent growth in minority enrollment that preceded deregulation has continued with the change.[14]

Although greater independence sustains both academic quality and diversity, so far it has not worked to reduce cost to the taxpayer or the consumer. Data from the National Center for Public Policy and Higher Education confirm that costs to students in Michigan run higher than a more coordinated approach.[15] Michigan's per-capita income is just below the national average, but its tuition charges rank in the top ten.[16] As the second wealthiest state in the nation in terms of per capita income, New Jersey makes a substantial contribution to higher education. It ranks in the top 10 states nationally in appropriations and

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[14] Peterson and McLendon in T. MacTaggart (ed.), *Seeking Excellence Through Independence*, p. 176.
[15] Richardson et al., 1999.
[16] *The Chronicle of Higher Education (CHE)*, 1999-2000 Almanac Issue, vol. 46, no.1 (27 August 1999).

in tuition charges.[17] There is no sign that the Garden State will be lowering costs as a result of deregulation.

Why do these deregulated states spend more on higher education? They do so partly because they have the money, partly because of the nature of the market for higher education, and partly because of duplication of some programs and educational services. Howard Bowen's well known "revenue theory of cost"[18] helps explain overall spending behavior in colleges and universities: like other non-profits, public colleges spend all the money provided to them. This explanation applies to regulated as well as independent public institutions, although as the St. Mary's case study suggests, charter campuses may be more likely to manage the money they do have especially well.

The nature of the market for higher education has not historically favored competition based on price. If, for example, students and their parents perceived baccalaureate degrees from every institution to have equal value, then the market would resemble that of other commodities and those with the lowest tuition would attract virtually all students. Instead, the market seems to be what economists calls monopolistically competitive in that consumers believe that they would receive different benefits from different schools and thus some are willing to pay a premium for the option with greater perceived value. Charter colleges or others that have developed a distinctive niche in the market place can charge higher tuition of qualified students than their less distinctive competitors. This reality underpins St. Mary's success in increasing tuition revenue, although as part of its charter the college transfers substantial parts of this revenue into financial aid for low-income students.

Finally, high costs probably derive in part from program duplication as well as redundant administrative costs, as each campus hires its own legal counsel, architects and facilities managers, internal auditors and so on. Shortly after the elimination of New Jersey's coordinating board with its strict program approval process, the public college presidents endorsed 73 new programs.[19] While this plethora gives educational consumers more choices, it also increases institutional cost. Michigan consumers also have the benefit of choosing among many roughly similar programs offered by a number of public institutions at locations across the state. It appears that these states have decided "to let the market (in this case, the political market, which generates state funding, and the student market, producing tuition revenue) decide which programs will succeed rather than the judgments of a central bureaucracy."[20] If duplication contributes to greater costs, with respect to academic programs, it also offers consumers greater choice among competing options.

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[17] Ibid.
[18] H.R. Bowen, *The Costs of Higher Education* (San Francisco: Jossey-Bass, 1980).
[19] D.G. Greer, "Defining the Scope and Limits of Autonomy: New Jersey," chap. 5 in T. MacTaggart (ed.), *Seeking Excellence Through Independence*.
[20] T. MacTaggart (ed.), *Seeking Excellence Through Independence*, p. 178.

Other claimed benefits of deregulation are more difficult to substantiate. Our personal experience in both highly regulated and laissez-faire environments tends to confirm the published testimony of executives who have worked in public and private institutions that greater freedom of action attracts and produces more effective leaders.[21] In addition to the examples provided in the next St. Mary's section, there is anecdotal evidence of improved operational efficiency in deregulated institutions, but lacking some comparative study we hesitate to claim universal improvement in day-to-day management. If greater program choice is regarded as a plus for consumers, then students and other beneficiaries of advanced education, such as employers, are clearly advantaged by deregulation. Finally, academic freedom is this country seems to be well protected by state and federal protections of free speech, the efforts of watchdog groups like the American Association of University Professors, the American Civil Liberties Union, and university and system policies. Academic freedom does not seem either to be enhanced or eroded by deregulation.

As we have seen, fears that deregulation brings about or would engender fewer opportunities for low-income people and minorities have proved unfounded. Nor has the relative freedom of Michigan and New Jersey, or other states with a more modest relaxing of the rules, led to eruptions of fraud or other abuse. Greater competition has not resulted in noticeable damage to public or private institutions presumed to be less competitive. In a few instances, small, rurally isolated campuses have seized on the new freedom to develop attractive niches or exploit communications technology to build enrollment. However, there is some evidence that deregulation without some vestige of control over programs and missions does lead to proliferation and greater cost. Absent a well-funded, need-based financial aid program, these greater costs passed along to students in the form of higher tuition will work to reduce access.

Clearly, deregulating public higher education is a policy option worth serious consideration, although as we have suggested it carries somewhat higher costs for the taxpayer and the student. Is there a workable alternative that combines the advantages of deregulation without its apparent liabilities? The next section of this paper suggests that the charter college idea as developed at St. Mary's College of Maryland offers some advantages over wholesale deregulation.

CHARTER COLLEGES: EXISTING PRECEDENTS

To our knowledge, the most relevant existing example of a charter college is St. Mary's College, Maryland. One of us, Berdahl, undertook a 1996 case study of this institution, which was published as a chapter in a 1998 book edited by the other, MacTaggart, *Seeking Excellence Through Independence*.

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[21] W. Bennis, *Why Leaders Can't Lead: The Unconscious Conspiracy Continues* (San Francisco: Jossey-Bass, 1989); J. Fisher, "The failure of statewide coordination," *Chronicle of Higher Education* (16 June 1995): A48; J.A. DeBiaggio, G.A. Haaland, and S.B. Sample, "Confessions of a Public University Refugee," *Trusteeship* 4, no. 3 (1996): 6-9; K.A. Shaw, "Helping Public Institutions Act Like Private Ones," chap. 3 in T. MacTaggart (ed.), *Seeking Excellence Through Independence*.

Liberating Colleges and Universities from Excessive Regulation. The case study, based on confidential interviews with persons both from the institution and from state government in 1996, concerns the 1992 Maryland legislation that granted St. Mary's College, a "Public Honors College," a lump sum budget and exemption from most normal state controls (e.g., over procurement, personnel, and some capital development processes) in exchange for an institutional agreement to cap state tax support at a mutually agreed 1992 level (plus future growth to cover inflation). In addition, St. Mary's College agreed to use some of the additional tuition income from the institution's plan to double its tuition charges in five years, from $2,500 to $5,000, to hold harmless the access of low-income students by virtue of increased institutional student financial aid.

The relevant policy questions were, Did the changes turn out, over time, to create a "win/win" for the institution and the broader public interest? Or did informed opinion on campus or in the state capital perceive the changed status not to have been in the best interest of either the institution or the state?

The case study found that key opinion at both the campus and the state capital held that the changed status had been good for all parties, including, in particular, the notion of the public interest. St. Mary's College had been able, through its newly given procedural freedoms, to save $2.3 million on a $4.7 million construction project; to cut 25 percent of the costs for ordering 179 multimedia computers; and to institute a performance-based, merit personnel system, instead of having to use the rigid state Cost of Living Adjustment (COLA) system for employee remuneration.

Perhaps more important than these significant savings were other, largely unanticipated results, for example, the extent to which the power and the responsibility for self-government would bring more vitality to the College governing processes. It was easier to attract outstanding persons to serve on the Board of Trustees when the nominees were made to understand that they would be no "figureheads": the decisions that they would help make would actually shape the College and demonstrate its general accountability to the people of Maryland. Among St. Mary's trustees were citizens of such stature as Ben Bradlee, editor of the *Washington Post*; Paul Nitze, former member of the National Security Agency; Andrew Goodpastor, former General in charge of NATO; Steve Muller, President Emeritus of the Johns Hopkins University; and Ben Cardin, member of the U.S. House of Representatives from Baltimore. With a lay board of that quality, it was not difficult persuading the Governor and the state legislature to give the college more freedoms.

Concerning internal benefits of the new relationship, when the faculty and administrators learned that the system of lump sum budgeting would allow the institution to pass on considerable discretion down to the spending units, making them accountable for their decisions, the budgeting calculations and spending habits reportedly no longer dealt with "games with the state" but rather with real decisions showing fiscal responsibility. The new vitality in budgeting aided the five-year academic planning for the Public Honors Curriculum to be linked to careful fiscal considerations.

The strengthened board of lay trustees, in turn, was able to do a more effective job of raising funds from private philanthropy, and these increased funds, added to the increased income from doubling the tuition in five years, built a strong fiscal base for increased student aid and increased faculty salaries. Exploiting its market niche as a Public Honors College able to compete with many prestigious private liberal arts colleges, St. Mary's increased both the academic qualifications of admitted students (Scholastic Aptitude scores increased from 956 in 1983 to 1170 in 1994) and enrollment of minority students (from 8.5 percent in 1991 to 10.6 percent in 1994).

Faculty matters improved as well, perhaps reflecting something of a "Hawthorne effect" for the campus having been singled out for special treatment. First, some of the additional resources were used to reduce the student/faculty ratio from 16:1 to 13.6:1, and the faculty grew in size (from 72 in 1983 to 110 in 1994), in diversity, both by gender and by race, and, according to a Middle States accreditation team judgment, in quality as well.

While a few persons on the state government side voiced misgivings about putting even a small portion of the state budget out of the discretionary sector, most of those interviewed agreed that at least by four years later, the state had seemed to get a good bargain from having granted St. Mary's special status as "quasi-privatized." It is crucial to recognize that only some *procedural* controls were withdrawn; the institution still remained accountable to the Maryland Higher Education Commission (MHEC), the statewide coordinating board, for approval of its basic role and mission (it could not decide to try to become a technological university!) and in terms of conforming to MHEC policies about general education and assessment of student learning. This, the case study concluded, was essential to ensure that the public interest in higher education continued to be served. But, according to the logic of this conclusion, if the public interest is protected by continued state monitoring of the *substantive* aspects, state leaders should have the vision and the courage to recognize that procedural accountability is a means, not an end in itself, and that the state can at least sometimes get public higher education that is both more efficient and more effective with *fewer* procedural controls. Appendix B presents the indicators of performance expected by the state from St. Mary's College.

Berdahl in 1999 revisited both the institution and the state capital and found parties at both locations still basically happy with the special relationship. The institution had drawn up its *Strategic Plan, 1997-2003,* and this document charted continued improvements in entering SAT scores (1249 for Fall 1996), in entering diversity (20 percent), in graduation and retention rates (75 percent), in faculty with terminal degrees (96 percent), in private fund raising ($250,000 in 1997), and in physical facilities. In Annapolis one heard no serious "second thoughts" on the agreement, with a recognition that the institution would probably want to re-open the level of the cap on state appropriations to reflect the fact that St. Mary's had purposely grown by 200 FTE students.

One has yet to make an explicit connection between the St. Mary's "success story" and the 1999 decision of the Governor and the legislature to grant the huge University System of Maryland, with its 11 campuses, the legal status of "Public Corporation," which brings to both the System office and its constituent campuses some greater freedom from state controls regarding personnel and procurement. The legislation resulted from a Blue Ribbon Commission, the Larson Task Force, which recommended both enhanced state funding and more operating freedoms for the System and its campuses. One of us, MacTaggart, was part of a staff furnished to the Task Force by the Association of Governing Boards, and he can attest that the St. Mary's example at least improved the atmosphere in the state capital for granting the System and its campuses more freedom.

What relevance, if any, has the St. Mary's experience for the issue of possible charter colleges in Massachusetts?

To be sure, the St. Mary's model cannot be transferred to Massachusetts in whole cloth because of the substantial differences in policy priorities and political culture. Only very few Maryland faculty (two community colleges) bargain collectively. Instead, there is a strong tradition of shared governance through the faculty senate system. Interestingly, St. Mary's reinstated tenure as a further means of promoting faculty commitment to the institution. Any proposal to initiate charter colleges in Massachusetts must take into account that shared decision making there requires union participation in some form. St. Mary's acquired its independence in a time of severe financial constraint in Maryland. Thus, policy makers accepted the "high tuition-high aid" approach because it provided the College with essential resources while reducing the draw on the state treasury. Massachusetts, by contrast, currently enjoys remarkable economic prosperity and has pursued a multi-year effort to lower tuition through increased state subsidy. Pricing or tuition policy for charter colleges needs to be designed in light of the state's goal of increasing access through affordable pricing.

If the differences are significant, Maryland and Massachusetts have much in common as well. Both states have a statewide coordinating board (the Massachusetts board also has some governing functions vis-à-vis the state colleges and community colleges); both have active campus boards with substantial authority; and both have been willing to reorganize their higher education portfolio from time to time. The goal of higher education reform in both states is to improve efficiency and quality of service to consumers. And in both, educational policy is forged in a competitive political environment involving contentious debate among regions of the state, interests groups, ideological factions, and political parties.[22]

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[22] R. Berdahl and F. Schmidtlein, "Restructuring and Its Aftermath: Maryland," chap. 7 in T. MacTaggart et al. (eds.), *Restructuring Higher Education*; P.H. Crosson, "Where All Politics is Local: Massachusetts," chap. 4 in T. MacTaggart et al. (eds.), *Restructuring Higher Education*.

Charter Plans in Virginia

The state of Virginia is seriously examining a proposal to implement the charter idea at all of its public four-year institutions and possibly in its community college system as a whole.

Proposals currently before a Blue Ribbon Commission for Higher Education in Virginia include significant lessening of state controls and a more predictable level of state funding in exchange for enhanced institutional accountability to the state for the quality of results. In a report mailed to that Commission, *Imposing Market Discipline on Public Colleges and Universities*, co-authors Robert Archibald and Michael BeVier recommended abandoning the existing package of tuition price controls, operating subsidies, and regulatory management. A long-term contract between the state and each individual campus would take its place and specify the particular block grant that would be increased during the term of the contract (five or six years) only to cover inflation or mutually agreed enrollment growth.

The institutions would charge out-of-state students full economic cost but would cap in-state tuition below market levels. They would also admit students on a need-blind basis and provide need-based student financial aid. Within these conditions, each campus would be independent and responsible for managing its own affairs.[23]

The Blue Ribbon Commission seems to be prepared to take these suggestions seriously as at least starting points for a wide-ranging policy discussion. Currently circulating is a Working Document on *Institutional Performance Agreements for Virginia Higher Education*. Stressing its tentative exploratory nature, the 12-page paper outlines a series of agreements that might be made on a differential basis with each public four-year institution and, perhaps, since it is governed by a single board, with the Virginia community college system as a whole. "The chief virtue of the institutional performance agreement concept is that it supplies a vehicle for combining adequate and reliable funding and managerial flexibility with institution-specific performance standards and accountability."[24] Concerning the particular aspects of deregulation, the Working Document notes,

> Institutional performance agreements should address the extent and nature of deregulation, enhanced managerial autonomy, and streamlined reporting to the state. It is clear that the cost-effectiveness of some potential deregulation and decentralization measures varies by school, as do the systems and capabilities that would be necessary to effectively transfer certain responsibilities to the institutions. Thus, while the general thrust should remain one of deregulation and decentralization, such provisions should be tailored to the needs and capabilities of particular institutions.[25]

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[23] R. Archibald and M. BeVier, *Imposing Market Discipline on Public Colleges and Universities*, Virginia Institute for Public Policy, Sterling, Virginia, no. 3, 31 October 1998.
[24] Governor's Blue Ribbon Commission, *Institutional Performance Agreements for Virginia Higher Education*, Working Document, 30 July 1999, p. 3.
[25] Ibid., p. 9.

The institutions would still be held accountable to the state for the accomplishment of their basic role and mission at a high-quality level, with performance indicators unique to each participating four-year public institution monitored by the state coordinating board. In a sense, then, Virginia is considering extending something like charter status to those of its four-year public institutions that feel ready to accept the challenge and can convince the state that they are "ready."[26] Our attention has also been called to a formal document published on May 18, 1999, by the State Council for Higher Education in Virginia, *Virginia Higher Education Performance Funding Model*. Since this document starts out with purpose number one, "Free institutions from unnecessary regulatory constraints, thereby allowing them to pursue their missions with greater efficiency and creativity,"[27] it is clearly also relevant to our notion of charter colleges.

Another variation on the charter model is that introduced at California State University-Los Angeles, where the College of Education was granted charter status by the CSU System office. We have not pursued that example further because it involves decentralization from *system* regulations and not from those of the state. But awarding charter status to some colleges or faculties on a campus and not to others is an interesting idea that might be analyzed by others.

The Policy Making Environment in Massachusetts

Policy proposals that ignore political realities and the interplay between policy and interest group agendas are destined to experience only a short shelf life. As we developed this proposal for charter colleges, we listened to a number of interviewees in Massachusetts and learned the following:

1) Educational issues having to do with access, cost, quality, and most of all control are hot topics in the Commonwealth. Governor Cellucci's call for charter colleges quickly drew heated responses from John Silber, Chancellor of Boston University, and Stephen Gorrie, President of the Massachusetts Teachers Association. Objecting to the Governor's proposal to drop tenure and collective bargaining, Gorrie argued that the result would be weaker institutions "unable to attract top-notch faculty."[28] Contending that a law would suffice to eliminate the right of teachers to bargain collectively, Silber labeled the governor's proposal "crazy."[29]

2) Powerful interest groups contend over policies and control of the K-12 and higher education agenda. One political insider told us that the teachers' union is the single most influential interest group in the state. The private colleges and universities, whether represented by their association or high profile

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[26] People wanting more information may call the Blue Ribbon Commission Executive Director, Maureen Matsen, 804/225-2612.
[27] State Council for Higher Education in Virginia (SCHEV), *Virginia Higher Education Performance Funding Model*, Richmond, Virginia, 1999.
[28] Rebecca Duran, "Massachusetts charter college proposal criticized," *The Daily Free Press*, 18 March 1999.
[29] Edward Mason, "Silber calls charter college plan 'crazy'," *Boston Business Journal*, 26 March-1 April 1999.

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campus executives, strongly influence the direction of educational policy through the media and behind the scenes. The private and public sectors of higher education in Massachusetts do not seem to enjoy a shared sense of purpose. There exists an unusually high level of animosity between the unions representing teachers, both K-12 and higher education, and some business leaders and others who have been appointed to leadership positions. James Carlin, who recently stepped down as chair of the Board of Higher Education, has been outspoken in the press in his criticism of tenure and the faculty union.

3) The educational hierarchy in Massachusetts ranges from the world class and nationally recognized private institutions at the top, to the University of Massachusetts and especially the Amherst campus, to the community colleges, which are credited with being well managed and pursuing a well-accepted mission. The state colleges, many originally normal schools, are often criticized for having low standards and being dominated by their faculty unions. This negative perception found reinforcement in the recent debacle over low test scores of teacher education students.

4) Words become loaded with political connotations in this heated environment. We were advised, for example, to find a term other than *charter* college because this term would inevitably be associated with the sometimes bitter debate over charter schools and with the contending parties in that debate. We choose to stay with the term because it best describes the idea of these independent public institutions.

5) Notwithstanding all these contending forces, educational change does come about, as one observer told us, "when all the stars align." Thus Charter, Horace Mann, and Pilot schools have become a reality. There are early signs of effective reform in teacher education. And there is little shortage of ideas being championed by thoughtful and powerful policy makers that, if they read their horoscopes accurately, may result in further improvement.

Our modus operandi in light of all this has been to balance, to the best of our ability, sound policy ideas with recognition of political realities. Thus we disagree with Governor Cellucci's proposal to junk tenure because effective faculty tenure policies are consistent with successful charter colleges. We also believe that the faculty must be involved in the design of charter colleges if this idea is to be implemented successfully. Based, then, on what we learned of the Massachusetts political culture in higher education and on what we heard from our various interviews, we offer guidelines for the possible establishment on one or more charter colleges in the state. While opportunities sometimes appear to create an entirely new public institution (e.g., California taking over the federal army base at Ford Ord and turning it into Cal State-Monterey, or Florida creating Florida Gulf Coast University, a new public four-year institution, and, incidentally, one without faculty tenure), our reading of the Massachusetts scene is that charter status is most likely to be awarded to an existing public institution and therefore, the guidelines are offered with that probability in mind. If, however, it were possible to create a brand new charter institution in Massachusetts, then the Vanguard Proposal described in appendix A could be considered as one of the options.

A Suggested Model for Charter Colleges in Massachusetts

1) *The Fundamental Role of a High Quality Board of Trustees.* To qualify for Charter status, a college or university must have, or create, an individual board of trustees, able to accept very serious fiduciary responsibilities when the state grants maximum procedural freedoms to the institution.

So crucial is a high-quality board of trustees to the state decision to relinquish many traditional controls over the institution that we urge Massachusetts leaders to consider strengthening their processes for screening and selecting board members so that the governor may identify outstanding citizens for this role. A related process is one employed by the American Bar Association to evaluate the qualifications of persons nominated for judgeships. The Association of Governing Boards in Washington, D.C., can supply the details on how to do this in higher education, if state leaders are so inclined. The St. Mary's example in Maryland at least suggests that higher quality lay citizens can be found and persuaded to serve when they see that their role as trustees is a meaningful one in an institution that has broad powers of self-government.

2) *The Basic Trade-Offs.* Once a very strong Board of Trustees is in place, the trustees, the President and his or her administration, and the faculty of the institution in question can consider seeking charter status. The basic requirement is pledging to the state that in exchange for getting state appropriations as a lump sum, capped to a mutually agreed amount plus future inflation, and being freed of state controls over tuition and most state procedural controls over how institutional funds are spent, the charter institution will demonstrate within five years of charter status that it is providing both more efficient and more effective higher education.

Meeting this goal means that the quality would go up and the costs to the state would not increase. During that five-year period, the state, through its coordinating board, would retain sovereignty over the institution's basic role and mission and over the introduction of new academic programs compatible with that role and mission. The charter institution, involving obviously its faculty, would continue to be accountable to the coordinating board for information about assessments of student learning, and such other indicators of quality assessment and economic efficiency as both parties would mutually endorse. Also during this initial period, any substantial drop in enrollment would lead to a reduction in the state block grant. In addition to quality indicators, the charter agreement could include passing along to students any cost savings in the form of scholarships or lower tuition. While not all indicators of improved performance would show dramatic gains within five years, the coordinating board would need to be convinced that sufficient improvement had occurred to merit renewal of the charter. See appendix B for a list of some of the indicators used by the Maryland Higher Education Commission in assessing the performance of St. Mary's College.

3) *The Tuition Issue.* We recognize that the tuition issue is particularly sensitive in Massachusetts, where the state has taken much pride in providing tax resources to reduce the relatively high (by national standards) tuition costs in public universities and colleges.

However, we judge the capacity to set and retain tuition income to be a crucial ingredient of any institution's effort to claim larger responsibility for determining its own fate. Related problems concerning access and diversity can be handled by attaching conditions to the exercise of this newly granted power. It must include a commitment to plow back such portions of the additional tuition income into student aid as are necessary to maintain or improve the institution's present diverse and low-income student population. If the state needs further reassurance, it can cap tuition costs.

The institutions chosen for charter status should find themselves able to raise tuition to some degree and still maintain or improve student application demand. Using the greater internal management flexibility to strike out more boldly with academic innovations, and even exploiting the prestige of having been singled out for charter status, should strengthen the institution's market position and allow it to raise its tuition successfully. Since Massachusetts would select only a few charter schools, it could still pursue a statewide policy of low tuition for the vast majority of colleges and universities.[10]

4) *Improved Private Fund Raising.* It is also anticipated that the strengthened college Board of Trustees would exploit the institution's charter status to make aggressive efforts to raise more funds from non-state sources. We note in passing here the provision in Senator Rosenberg's Fair Shares Plan for state incentive grants to public institutions for increased fund raising. A charter college should be able to exploit that possibility to the maximum.

5) *Academic Innovations.* A basic assumption is that combining additional tuition income and additional private fund-raising with greater management flexibility in spending the limited state tax funds would empower the institution to strike out in directions of bold academic innovations. The twin purposes of this effort are more efficient and more effective higher education. The faculty may or may not be enthusiastic about proposals to cut costs, but they certainly should welcome state initiatives that seem to encourage improvement of academic quality.

6) *Institutional Procedural Freedoms.* The greater management flexibility would include such items as freedom to make purchases without going through state purchasing controls, and freedom to hire, pay, promote, and fire non-teaching staff consistent with standards of due process, relevant bargaining

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[10] Because the question of the relationship of tuition policy to access is so critical in Massachusetts, it is worth noting that, nationally, there are two distinct perspectives on the topic. The dominant view is that universal low tuition works best to bring about high participation rates. Although this approach subsidizes high-income families who could afford to pay more, it does limit the substantial burden of debt engendered in part by high tuition costs. Thus several states, including Massachusetts, have worked to freeze or actually lower tuition levels over the past few years. The high tuition-high aid model is the alternative. Theoretically, at least, this approach matches relatively high tuition with high levels of need-based aid so that access for low-income persons is preserved. In practice, in Vermont and elsewhere, legislative appropriations for aid have failed to match tuition hikes with the unfortunate result of high tuition coupled with not so high aid.

unit agreements, and fairness without state personnel controls. Charter colleges could also exercise the freedom to erect and maintain buildings without state building controls, provided, for the first five years, that they are privately funded, but after that, if real economies can be demonstrated at the same time that quality and safety standards are maintained, even those financed by public funds. An option, suggested by one of our interviewees, would be to split any financial savings equally between the campus and the state.

7) *State Post Audit*. The charter institution will continue to be subject to state post-audit. If instances of financial fraud and abuse are discovered, the remedy would be to change the administrators responsible and, if necessary, replace some trustees, but not to remove the management flexibility.

8) *The Tenure Issue*. The Governor's message that mentioned the idea of charter colleges explicitly linked the notion to the need to abolish faculty tenure and collective bargaining. Regarding tenure, one of the purposes in considering charter status for one or more public colleges is to permit them to operate more "like private institutions." We found that nearly all the private institutions in Massachusetts (on the whole, a very impressive group of institutions) have and want to keep the practice of tenure.

However, retaining the practice of tenure is one thing, and allowing it to approach unhealthy percentages of the faculty, e.g., 80 percent, is another. If the initial awarding of tenure is made appropriately rigorous, and if the institution will adopt a constructive form of post-tenure faculty evaluation, the issue can be accommodated without the trauma of trying to abolish it. We, therefore, do not recommend that tenure be abolished for the institutions chosen for charter status.

9) *Collective Bargaining*. The collective bargaining issue cannot be "accommodated" so readily. The practice is so pervasive in Massachusetts and the political support systems for it so powerful that we must somehow meet the issue head-on. Critics of faculty unions feel strongly that unions and their members will oppose any innovations that even remotely threaten faculty prerogatives. We have both been college teachers, and one of us still is, so there may be prejudice in our reply that we do not see the situation as that hopeless.

Each charter college, regardless of its present legal status, should either be authorized to bargain as an individual campus unit or allowed to add specific "local" sidebars to the system-wide bargaining agreement. While some campus leaders to whom we spoke preferred system-wide bargaining, hoping to avoid sharpening local issues of disagreement, we see no way to avoid localizing the process, if the charter college is, as the theory goes, "to take responsibility for its own fate."

We want to note two potentially relevant practices from the Massachusetts K-12 sector and one potentially relevant proposal currently being considered by the state legislature. Both the Horace Mann Charter Schools and the Boston City Pilot Schools are launched with the active and joint approval of both management and labor. For the Horace Mann Charter Schools this involves operating under a charter approved by the local school committee and the local teachers' union and granted by the State Board of

Education. "To the extent provided by the terms of their charters, Horace Mann charter schools may be exempt from local collective bargaining agreements, provided that employees of the school will continue:

(a) To be members of the local collective bargaining unit;

(b) To accrue seniority; and,

(c) To receive, at minimum, the salary and benefits established by the local collective bargaining agreement. Employees will be exempt from all union and school committee work rules to the extent provided by their charter."[31]

Only six Horace Mann Charter Schools have been authorized since their founding law in 1997, and parties to whom we talked about them all agreed that it was still too early to judge their success or failure.

The Boston Pilot School Project was launched by a three-year agreement, effective September 1, 1994, between the School Committee of the City of Boston and the Boston Teachers Union, Local 66, AFT. It authorized up to six pilot schools during the period in question "unless both parties agree to establish more." "Pilot schools will be able to select their own staff from inside or outside of the Boston Public Schools, without regard to seniority. Participation by Boston Public Schools teachers is voluntary." "Pilot schools will be able to develop innovative curricula and programs free from Boston Public School and Boston Teacher Union regulations, provided that they comply with all federal and state laws and regulations and court orders."[32]

These two examples show that it is not impossible to get the active cooperation of K-12 teachers' unions in promoting some forms of academic innovation. We would hope that faculty unions in colleges might be equally willing to consider some non-traditional structures and processes in the pursuit of more effective learning by Massachusetts students at the college level.

To this end, we cite a proposal in current House Bill 2499, authored by Representative Hal Lane, just retiring from the legislature. In this Bill, "An Act Relative to the Evaluation and Professional Development of Teachers and the Improvement of Teacher Quality in the Commonwealth of Massachusetts," Sections 35, 36 and 37 authorize the faculty at any public school to create a faculty senate in which there would be full participation in a variety of curriculum and evaluation processes, including the development of a comprehensive school reform model, and then exclude such curriculum matters from the external collective bargaining process. Whatever the fate of this bill, we feel that its separation of the indispensable faculty role in any effort to reform the curriculum from the important faculty role in organizing collectively to improve working conditions offers some possible insights for the charter college process. We would appeal to the local faculty union to agree to the creation of a campus faculty senate, if such a body does not already exist (we were told that some state college and community colleges have them, but

[31] The Commonwealth of Massachusetts, Department of Education, Charter Schools Technical Advisory, 98-2, August 13, 1998.

some do not), and to further agree that it would be the arena in which full faculty participation in the academic reform process would occur. The union could then undertake its traditional role in negotiating such items as faculty salaries, retirement, and fringe benefits. If the faculty are thus reassured that they do not need to use union bargaining leverage to realize their legitimate and crucial role in academic innovation, the reform process will carry less heavy baggage and have a better chance to succeed, and perhaps the faculty members will be more inclined to persuade their union to agree to charter college status.

In the abstract, a case can be advanced for eliminating collecting bargaining within charter colleges. If this were done, many of the constraints from existing collective bargaining agreements could be bypassed. The Vanguard proposal, noted earlier and reproduced in appendix A, does just that, and substitutes multiple-year faculty contracts for tenure as well. Our view is that in a state like Massachusetts with its long labor history and politically powerful unions there is little chance that the legislature will endorse the elimination of faculty collective bargaining any time soon. Thus the realistic alternative is to involve the faculty through the modifications of the collective bargaining process described above. Clearly enough, models for this compromise approach exist in the state's K-12 charter schools.

10) *Choosing Institutions for Charter Status*. Two questions now arise: how many institutions to be chartered, and which ones? Because of our stringent condition relating to a very strong local board of trustees, we do not see this process as applying to a whole system of colleges. The University of Massachusetts system already has more operating freedom from state controls than its public segmental sisters in the state colleges and community colleges, and furthermore, it has already launched its Commonwealth College experiment in a statewide Honors network. But among its institutions, we heard the Lowell campus nominated as the most likely candidate. Our own judgment is that the state and community colleges are the more likely sources for initial choices.

In our scrutiny of the state colleges, we thought in terms of two categories: those who were "already ready" in one sense or another, and those with the potential to develop more distinctive missions in the future. Two institutions already have a special market niche that would ease the process of "cutting loose," and a third one aspires to gain it. The Massachusetts College of Art and the Massachusetts Maritime Academy are both poised to exploit charter status. Each serves a distinct student clientele, and each has the potential to raise even more funds in the private market, given the distinction of charter designation. The Massachusetts College of Liberal Arts clearly aspires to gain similar distinction in its mission and its student body, in effect wanting to become a Public Honors College similar to the St. Mary's model in Maryland. Our recommendation would be to start with one or more of these three, and then see which others might aspire to distinctive missions in the future. It should be emphasized that charter status should not imply an elitist orientation, but rather a distinctive one. For example, in addition

[12] Pilot Schools Overview, Draft #1, 3 November 1995.

to the existing institutions mentioned above, charter status could be granted to an institution focusing on advanced technical education (perhaps following the European polytechnic model), or one designed to address the needs of urban populations.

We spent less time with the Massachusetts community college system; but we heard it widely praised as doing, overall, a very effective job, and it might be that one or more of its campuses deserves to be considered as well. One reviewer, however, dissented from our favorable verdict, but nevertheless suggested them as a possible target for chartering:

> Basically, [the Massachusetts community colleges] are pursuing the wrong mission—serving as low-end traditional colleges in a state rich with traditional colleges, and letting languish the alternative mission of adult workforce training and broader "lifelong learning." This is in part because of the peculiar way they are governed and funded. Some community colleges are straining to become effective parts of a workforce development system. I can see lots of potential in liberating them to explore that mission through reforms such as those discussed [in this report].

Conclusion

Reasonable policy goals for public higher education in Massachusetts, in most states for that matter, would include these features:

1) Broad access so that all students with the talent to profit from higher education would find a place to enroll and could afford a degree without incurring crushing debt. A particular but not exclusive mission of public institutions is to seek and serve students historically disenfranchised because of their race, income level or social class.

2) Efficient use of public resources in terms of the level of result for monies provided and sound and fair management of those resources.

3) Educational quality especially defined in terms of what students need to know and be able to do as a result of their academic experience, plus excellence, where appropriate to the institutional mission in research and service as well.

4) Responsiveness to the state's larger cultural, social and economic agenda.

Not surprisingly, the 1999 annual report of the Massachusetts Board of Higher Education identifies goals similar to these. Massachusetts State Senator Stan Rosenberg has sponsored legislation that would move the state higher education system in those directions. The senator, who saw no pressing need for charter colleges, proposed instead Fair Share Funding for Public Higher Education, based on a 1994 Task Force by that name, which he helped launch. Concerned more with rectifying serious earlier state shortfalls in funding higher education (1988-92) and less with deregulating the public institutions, the plan calls for a five-year increase in state funding. Incentives for private fund raising would be provided by the state, and performance indicators and outcome goals would be developed by the state coordinating

board. Although formal adoption of the whole plan by the state has not occurred, fair share funding proposals have been approved in the final appropriations act by the legislature for each of the past three years. We, however, feel that even if the state were to adopt Fair Share Funding, it would not preclude also creating one or more charter colleges. We can see both processes pursued at the same time, as the charter college concept explicitly does not call for increased state funding.

In our favorable consideration of the creation of one or more charter colleges, we were much persuaded by the careful and balanced appraisal of the parallel process of privatization, offered by a Harvard professor, John Donahue, in his 1989 book *The Privatization Decision: Public Ends, Private Means*. While the policy arenas he studied do not include education (either K-12 or higher), we found his cautions about the strengths and weaknesses of turning public functions into private, or near-private ones, compelling. Donahue warns that several crucial conditions must prevail for the privatization process to be successful. First, he notes that the quality of the expected outcomes must be very clearly specified and the means of evaluating them made explicit. Then he urges that the process of negotiating these outcome goals and the means of evaluating them be a very deliberative one. Finally, he states that the privatized unit must face strong competition in its newly freed status.[33]

In our view, these three conditions can be met in Massachusetts higher education. The role and mission of the charter college can be carefully delineated in conjunction with the state coordinating board, with perhaps that board retaining powers of program approval to ensure their compatibility with the agreed role and mission. And the state board could work with the institution to develop institution-specific performance indicators. Thus accountable to the state for "substantive autonomy," the institution could use its wide-ranging procedural freedoms to compete more aggressively with both public and private sector institutions. With the state appropriations to the charter college capped, the state is assured that the institution will not come back seeking more state funds. With its greater management flexibility, with its increased tuition income and with the probable increase in private fund-raising, the institution will have to learn to stand on its own two feet. But, by the same token, the institution will not have to divert important parts of its presidential and trustee leadership to the onerous annual task of generating state tax appropriations. And, as mentioned in the discussion of St. Mary's, it is also possible that there will be a spill-over effect into "institutional culture" when all parties in the shared governance process—trustees, senior administrators, faculty, and students—realize that the legal and financial ball is now really in their court, resulting in more serious and more imaginative behavior.

This paper has discussed the governance alternatives best suited to achieving the state's goals for public higher education. Currently, two alternative approaches are commonly available to policy makers: a centralized and highly regulated model that features relatively small boards of trustees overseeing

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[33] John Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, Inc., 1989), pp. 217-218.

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multiple colleges and universities and thousands, sometimes hundreds of thousands, of students. This approach has been the norm in the United States since the early 1960s and is probably the safest in assuring affordability and access to a generic level of educational quality. It suffers from the inefficiencies peculiar to constrained and bureaucratically controlled institutions, tends to stifle leadership and educational innovation, and generally inhibits the development of highly distinctive colleges. A second approach, long practiced in Michigan and more recently instituted in New Jersey, relies on something approaching the free market to deliver higher education services. This model contributes to more qualitatively distinct institutions and more creative leadership, but it is also more likely to incur greater costs due to duplication of programs and administrative services. While the free market approach may support higher educational quality, it does make it more difficult for the state to define and measure the results. The principle of diversity in the student body seems to be equally well implemented under both approaches.

The key to the success of charter colleges lies in linking authority and responsibility to the leaders at the campus, on the one hand, and insisting on well-defined results that both the state's representative and the college negotiate and then agree upon in a charter, on the other. St. Mary's College of Maryland offers one successful example of the charter college idea in action. The precise definition of charter colleges would need to be adjusted to recognize the political realities of the Commonwealth, especially the presence of collective bargaining, and Massachusetts's commitment to managing tuition in the interests of access. With these modifications, the charter college idea represents an attractive choice for several and perhaps eventually for more of the state's public institutions.

APPENDIX A

DESIGNATION AS A MASSACHUSETTS VANGUARD COLLEGE

The "Vanguard College" concept described in this Appendix was developed in 1997 by Stanley Koplik, Chancellor of the Massachusetts Board of Higher Education. It never moved beyond the proposal stage, for lack of major state support at the time.

Massachusetts needs more colleges that are managed responsibly and focused on accountability, measurable outputs, and performance, instead of regulation, inputs, and process. Under a new designation, "Vanguard College," campuses would agree to exceed the Board's performance measures in exchange for greater operational freedom, fiscal autonomy, and faculty benefits. Students would find an environment that is consumer-oriented with smaller classes, accessible faculty, innovative curricula, and effective use of technology. Vanguard Colleges can be the fastest and most efficient way for the entire public post-secondary system to move closer to the high standards of performance promoted by the Board of Higher Education.

A Vanguard College would

1) be exempt from certain existing board policies, such as new program approval rules, including growth by substitution, and program productivity guidelines.

2) have complete financial and managerial flexibility, including

- relief from state purchasing regulations
- authority to set tuition and fees
- full tuition retention
- annual operating grant for campus operations, without burdensome reporting requirements
- relief from state-mandated assessments such as workman's compensation
- relief from DCPO oversight.

3) gain the freedom to recognize and reward faculty, including

- base salaries set beyond rank
- a merit salary pool created to reward achievement of exceptional performance
- freedom from the cumbersome vagaries of collective bargaining agreements
- presence of real, shared governance and collegiality
- curricular flexibility to produce more diverse program and course offerings
- special allocation of professional development funds

- creation of more "high-status" professorships
- greater investment in instructional technology
- smaller class sizes.

In exchange for these benefits, the College would agree to

1) increase faculty productivity

2) exceed designated performance benchmarks for student retention, time to degree, and graduation rates

3) document that the institution's graduates exceed achievement standards in several key outcome areas including the ability to think critically, solve complex problems, and work collaboratively

4) document that performance of students in post-graduation work settings or graduate school exceeds employer/institutional expectations

5) replace tenure with renewable faculty contracts of 1-, 3- and 5-year terms

6) eliminate collective bargaining.

In order to be eligible for Vanguard College status, institutions would need to

1) submit an application in a form and manner prescribed by the Board of Higher Education addressing all elements of eligibility, responsibility and expected outcomes

2) provide an unqualified, independent audit of funds for the past two fiscal years

3) demonstrate achievement of all Board performance measures.

APPENDIX B

Performance Indicators Supplied to the State of Maryland by St. Mary's College, 1999.

Indicators used by the Maryland Higher Education Commission in assessing the performance of St. Mary's College address the areas of quality, effectiveness, access, diversity, and efficiency/allocation of resources.

Quality:

1 Student satisfaction with job preparation

2 Average faculty salary by rank vs. peers (percentile rankings):

Professor

Associate Professor

Assistant Professor

3 Student satisfaction; graduate/professional school preparation

Effectiveness:

4 Second year retention rates

5 Licensure exam passing rate

6 Graduate/professional school going rate

7 Six year graduation rate

8 Graduation rate of community college transfers

Access:

9 Annual tuition and required fees for full-time resident undergraduates

#10 Number of off-campus credit enrollments

#11 Percent full-time undergraduates who are Maryland residents

#12 Percent graduate/professional students who are Maryland residents

Diversity:

#13 Percent African-American total undergraduate enrollment

#14 Percent of all minorities of total undergraduate enrollment

#15 Percent African-American graduate/professional students

#16 Percent of all minorities of total graduate/professional enrollment

#17 Percent African-American full-time tenure track faculty

#18 Percent women full-time tenure/tenure track faculty

#19 Percent African American full-time executive/managerial

#20 Percent women full-time executive/managerial

#21 Six-year graduation rates of African-Americans

#22 Six-year graduation rate of all minorities

Efficiency/Allocation of Resources:

#23 Percent of lower division student credit hours generated by faculty

#24 Percent tenure/tenure track faculty teaching at least the standard load

#25 Dollars in private giving

#26 Dollars endowment value

APPENDIX C

November 29, 1999

To the Pioneer Institute:

I have had an opportunity to review the Robert Berdahl/Terrence MacTaggart study of charter colleges and I have a number of disagreements with the authors.

First, and most importantly, I am not comfortable with the authors' discussion of college costs. Throughout the Unites States, student tuition and fees are much too high. This applies to the public as well as the private sector. What parents and students are willing to do to pay these outrageous bills is alarming. They remortgage their homes, work two and three jobs, deplete their savings, postpone retirement, and invade their 401 (k) plans. Despite these efforts, half the students in the Unites States leave college with significant student loans that will take years to pay back.

It appears that the charter college concept almost guarantees increased public dollars and definitely guarantees increased student costs. There is a real problem allowing trustees, especially of public institutions where taxpayer dollars are often more than tuition dollars, to set tuition amounts. Colleges financial appetites are limitless. I have never agreed with a high tuition-high aid approach. What really makes sense is a low tuition-high aid approach.

As involves minority access, I don't think the situation would be any different in a charter college as compared with a non-charter college. Bright minority students can get into a long list of top-notch colleges and universities, often on a full scholarship. Minority students, like non-minorities, who are marginal academically will tend to go to the institutions that provide the lowest tuition and fees. One of the premises in this paper is that it is okay for tuition and fees to go up, which, in my opinion, is wrong and will push minorities away from our doors.

Second, I object to the defense of tenure (lifetime job guarantees). They point out that St. Mary's reinstated tenure as a further means of promoting faculty commitment to the college. This sounds very good, but it has been my experience that the faculties and their unions, especially tenured faculty, have a major commitment to themselves first and the institution a distant second. Of course, every faculty member who has tenure wants to keep the tenure system. Until public sector leaders and private sector university boards of trustees want to address the issue of faculty productivity, including tenure, nothing is going to happen other than a rise in tuition and fees along with demands for more money from legislators.

The authors discuss the Vanguard College concept developed by Stanley Koplik in 1997. This is an excellent model and it was on my agenda for 1999-2000. You will note that, under the Vanguard model, tenure is replaced with a multi-year contract system and that collective bargaining is eliminated. There won't be effectiveness as long as collective bargaining laws continue as they are currently written

or until we do something about the tenure system. Faculty unions in Massachusetts will oppose any innovations that even remotely threaten their prerogatives or pocketbooks.

Finally, something tells me that when the faculty demands "shared governance" they are essentially asking to be a part of management. Management, by definition, is not rank and file employees. It is my belief that shared governance is a disaster. The day-to-day management of a campus is not going to improve as long as no one has clearly defined authority. We invite chaos when the trustees, the president's office, the faculty, and its unions are all trying to be in charge.

To conclude, I do think it makes sense to give certain colleges special authority as involves construction projects and other bidding arrangements. I think you can do this sort of thing, however, without setting up a charter college. It would seem to me that we should offer solid support to our charter K-12 schools before we worry about dramatic post-secondary initiatives.

Sincerely,

James F. Carlin

James F. Carlin is a former chairman of the Massachusetts Board of Higher Education.

About the Authors

Robert O. Berdahl is professor emeritus of higher education at the College of Education, University of Maryland. Professor Berdahl has served as associate professor of political science at San Francisco State College and professor of higher education at the State University of New York, Buffalo. He is the author of *Statewide Coordination of Higher Education* and *British Universities and the State*, and co-editor of *American Higher Education in the Twenty-first Century: Social, Political, and Economic Challenges* (Johns Hopkins University Press, 1999).

Terrence J. MacTaggart is the chancellor of the University of Maine system. Previously he served as chancellor of the Minnesota State University system, where he was also professor of English. He is the lead author and editor of *Seeking Excellence Through Independence: Liberating Colleges and Universities from Excessive Regulation* (Jossey-Bass, 1998) and *Restructuring Higher Education: What Works and What Doesn't in Reorganizing Governing Systems* (Jossey-Bass, 1996).

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CHARTER COLLEGES:
BALANCING FREEDOM AND ACCOUNTABILITY

By Robert O. Berdahl and Terrence J. MacTaggart

"This is a fine paper, well written, responsibly argued, whose content provides a useful basis for discussion about the possibility of charter colleges in Massachusetts."

— *Charles Cook*
Director of Commission
New England Association of Schools and Colleges

"Berdahl and MacTaggart have done a masterful job of analyzing the concept of the charter college and applying the idea to Massachusetts.... The report covers interesting issues, and applies case study data from Maryland, Michigan, New Jersey."

— *Professor Bruce Cooper*
Graduate School of Education
Fordham University, New York, NY

"(I) found the manuscript wonderfully written and extremely interesting. It paves the way for an informed dialogue on charter colleges in the Commonwealth by bringing into play the important conceptual and practical issues, providing valuable information on practices elsewhere, and gathering reactions to the idea from a cross-section of the education community."

— *Professor Pat Crosson*
Director, Center for Education Policy
UMass–Amherst

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